



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/891,929	06/26/2001	Andreas Herpens	Beiersdorf 722-KGB	3738

27384 7590 04/21/2003

KURT BRISCOE  
NORRIS, MCLAUGHLIN & MARCUS, P.A.  
220 EAST 42ND STREET, 30TH FLOOR  
NEW YORK, NY 10017

EXAMINER

LAMM, MARINA

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 04/21/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/891,929

Applicant(s)

HERPENS ET AL.

Examiner

Marina Lamm

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

Acknowledgment is made of the amendment filed 2/5/03. Claims pending are 18-44.

Claims 1-17 have been cancelled.

#### *Claim Rejections - 35 USC § 102*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 18-20 and 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hewitt et al. (US 3,842,847).

Hewitt et al. teach compositions for the treatment of hair and scalp, said compositions containing 0.5-8% of an astringent metal salt (e.g. aluminum chlorohydrate) that causes a reduction in the activity of the sweat glands of the scalp. See Abstract; col. 2, lines 4-32; col. 6, lines 47-63. The compositions of Hewitt et al. diminish secretions of perspiration and sebum, keep hair and scalp clean for a longer period of time and prevent acne. See col. 6, lines 47-68; col. 7, lines 1-5.

Thus, Hewitt et al. teach each and every limitation of Claims 1-10 and 12-17.

#### *Claim Rejections - 35 USC § 103*

3. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hewitt et al. in view of Jaeger et al. (DE 3015868, Abstract).

Hewitt et al. applied as above. Hewitt et al. do not explicitly teach preventing or removing dandruff as claimed in the instant claim. However, Jaeger et al. teach using antiperspirant aluminum salts as dermatological agent against flaking of skin and scalp. See Abstract. Therefore, it would have been obvious to one having ordinary skill in the art at the

Art Unit: 1616

time the claimed invention was made to use compositions and method of Hewitt et al. for treating dandruff as suggested by Jaeger et al.

4. Claims 27-29, 31-38 and 40-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hewitt et al. in view of Kropf et al. (US 6,316,030).

Hewitt et al. applied as above. While the Hewitt's teaching is not limited to aluminum chlorohydrate, the reference does not explicitly teach aluminum hydroxylactate of Claim 27 and acidic aluminum/zirconium salt of Claim 36. However, aluminum hydroxylactate and acidic aluminum/zirconium salts are known antiperspirants conventionally used in perspiration-inhibiting compositions. See, for example, Kropf et al. at col. 7, lines 20-36.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use either aluminum hydroxylactate or acidic aluminum/zirconium salts of Kropf et al. in compositions of Hewitt et al. because aluminum hydroxylactate and acidic aluminum/zirconium salts of Kropf et al. are known astringent/antiperspirant salts commonly used for the same art-recognized purpose as aluminum chlorohydrate of Hewitt et al. Hewitt et al. suggests that water soluble metal salts which have the power to "narrow or close perspiration and sebaceous duct openings", other than aluminum chlorohydrate, can be used in their compositions.

5. Claims 30 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hewitt et al. in view of Kropf et al. and further in view of Jaeger et al.

Hewitt et al. in view of Kropf et al. applied as above. Hewitt et al. do not explicitly teach preventing or removing dandruff as claimed in the instant claim. However, Jaeger et al. teach using antiperspirant aluminum salts as dermatological agent against flaking of skin and

Art Unit: 1616

scalp. See Abstract. Therefore, it would have been obvious to one having ordinary skill in the art at the time the claimed invention was made to use compositions and method of Hewitt et al. and Kropf et al. for treating dandruff as suggested by Jaeger et al.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

6. Applicant's arguments filed 2/5/03 have been fully considered but they are not persuasive.

With respect to the rejection over Hewitt et al., the Applicant argues that "all of the instant claims require the composition comprising the antiperspirant active ingredient be topically administered "to an area affected by increased sebum production" and the Examiner "has not shown that these areas were affected by increased sebum production in the first place". See p. 9 of the remarks. In response, it is noted that Hewitt et al. teach that their compositions are applied to hair and scalp and "would counteract a tendency towards excessive perspiration in that area." See col. 1, lines 33-34.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until

Art Unit: 1616

after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

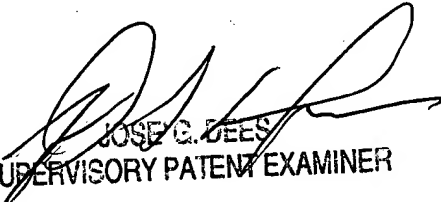
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ml  
4/20/03

  
JOSE G. DEES  
SUPERVISORY PATENT EXAMINER  
1616